

REMARKS

This communication is a full and timely response to the final Office Action dated August 27, 2010. Claims 11-20 are pending, of which claims 1, 18, and 19 are the independent claims. By this communication, no claims are amended. Favorable reconsideration of this application in view of the following Remarks is respectfully requested.

Rejection to the Claims

Claims 11, 18, and 19 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Sarskog (WO 01/62029) ("*Sarskog*") and further in view of Van Reenen et al (WO 03/037015) ("*Van Reenen*").

Claims 11-20 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dormehl et al (WO 03/007639) ("*Dormehl*") and further in view of Jouenne et al (U.S. Patent No. 6,286,085) ("*Jouenne*").

These rejections are respectfully traversed.

Preliminary Matters

The Applicants acknowledge with appreciation the Examiner's withdrawal of the objection of claims 11-17 and the rejection of claim 18 under 35 U.S.C. §101.

Claim Rejections under 35 U.S.C. § 103(a)

(1) Sarskog in view of Van Reenen

In numbered paragraph 4 on page 7 of the Office Action, the Examiner rejected claim 11 (as well as claims 18 and 19) for alleged unpatentability by *Sarskog* and *Van Reenen*. The Applicants respectfully submit that the purported combination cannot support a rejection of claim 11 because the applied references, whether taken alone or in combination, fail to disclose each element recited in claim 11.

Independent claim 11 recites, among other things, (1) dividing a batch of data into a plurality of subsets, (2) preparing a first subset of data from the plurality of subsets (3) transmitting the first subset of data to a network server for backing up. Referring to an exemplary embodiment of FIG. 1, for instance, mobile communication device (mobile/card) 3 divides data into a plurality of subsets (10 blocks). At step 10, the communication device 3 prepares a first subset of data including blocks 1-3 (3 of the 10 blocks) and then transmits the first 3 blocks (of the 10 blocks) to the server 2 for backup.

Claim 11 further recites that "the backup is delayed by a predetermined period of time...and the backup of at least one other subset of data from the plurality of subsets subsequent to the first subset of data is resumed at the end of said predetermined period of time." (emphasis added).

The grammatic construction of claim 11 would clearly suggest to one of ordinary skill in the art that each subset from the divided batch of data is individually sent for backup at different times. Thus, with reference to the embodiment of FIG. 1, after a predetermined period of time lapses at step 13, the backup method resumes at steps 14-16 by preparing another subset of data (blocks 4-6) subsequent to the first subset of data (blocks 1-3, which were previously transmitted and backed up), transmitting blocks 4-6 to the server 2 at step 15, and backing up blocks 4-6 at the server 2 at step 16. The above process would then continue until the remainder of the subsets (blocks 7-10) from the divided batch of data is transmitted and backed up. Thus, the entire batch of data (blocks 1-10) would be backed up.

Sarskog discloses a method of backing up stored information in a SIM card to a memory device of a computer. However, in contrast with claim 1, *Sarskog* discloses that **all** of the information stored within the SIM card is transferred to the memory device. In *Sarskog*, for example, contact information, i.e., a telephone book (e.g., telephone numbers and their respective owners) is saved in a SIM card, and at any given time, **all** of the

information is transferred to a computer or corresponding device for backup. See, e.g., p. 3, ll. 25-30. The information is not transmitted over separated communications. At no point is the information in the telephone book divided into different subsets for data transmission. For example, the reference does not provide that a first subset from the telephone book (e.g., contacts with last names A-C) is transmitted for backup and then a second subset from the telephone book (e.g., contacts with last names D-F) subsequent to the first subset, is transmitted for backup after the first subset has been backup up and after a predetermined amount of time. Rather, in *Sarskog*, all of the information is transmitted at one time.

The predetermined time intervals or specific events, to which *Sarskog* refers (and upon which the Examiner relies) pertain to given times upon which all of the information is again transferred for backup. In other words, either after a certain time has lapsed or after a certain event has occurred, the entire telephone book (i.e., each telephone number and its respective owner) is transmitted again for backup. The different transmissions are not directed to different subsets of the same set of data. Rather, they relate to different respective sets of data, e.g. the original contact list and an updated contact list. Regardless of the disclosed time intervals, the information within the memory of the SIM card is not divided for individual respective data transfers, nor is it backed up in manner similar to that of claim 1. Contrary to claim 1, all of the data in memory in *Sarskog*, is backed up at one time and then again at another time. As such, the reference does not disclose the above-noted features of claim 1.

Reliance is then made upon *Van Reenen* for allegedly teaching "dividing a batch of data to be backed up into a plurality of subsets...." While data to be backed up in *Van Reenen* may include names, telephone numbers stored, calendar data, addresses, etc. as noted by the Examiner on page 8 of the Office Action, the reference is entirely silent with respect to individually sending any of the information under the aforementioned sub-headings

separately from the remainder. For example, the reference is silent with respect to backing up information from one sub-heading (e.g., names), waiting a predetermined period of time, then backing up information from a second subset (e.g., telephone numbers) and so on. Rather, in *Van Reenen*, ALL the information is initially backed up. See, e.g., p. 3, ll. 15-16. In other words, all of the data from the above-noted sub-headings (i.e., names and telephone numbers stored in the telephone device, calendar data, addresses, files, notes, tasks, graphics, etc) are transferred for backup at the same time. Any later addition and/or change to the original data (i.e., if another contact is added, if a phone number changes, etc.) can be backed up individually. However, this added/changed information is not part of the "original" telephone book that was already backed up. Said another way, any subsequent backups of data can include either ONLY CHANGES that have been made to the data since the previous backup of ALL data (the changes, however, are not one of the subsets of the plurality), or a retransfer of ALL the data. Like *Sarskog*, the data that is sent in the later transmission is not a subset of the same set of data that was sent in the first transmission. Rather, it originates from a different set of data, i.e. updated information.

Therefore, similar to *Sarskog*, *Van Reenen* is entirely silent with respect to having a batch of data, dividing the batch of data into subsets, and then independently transferring each subset from that batch of data.

For at least the reasons set forth above, the Applicants respectfully submit that neither *Sarskog* nor *Van Reenen*, nor any combination thereof, teach the features set forth in claim 1. At best, the combination teaches either:

(1) dividing a batch of data into subsets (as taught by *Van Reenen*), transmitting the entire batch of data (including each subset) for backup (as taught by *Sarskog* and *Van Reenen*), waiting a predetermined period of time, and transmitting the entire batch of data once again for backup (as taught by *Sarskog*) OR

(2) dividing a batch of data into subsets (as taught by *Van Reenen*), transmitting the entire batch of data (including each subset) for backup (as taught by *Sarskog and Van Reenen*), waiting a predetermined period of time, and transmitting only changes made to the batch since the previous transmission (as taught by *Van Reenen*). Neither, however, is analogous to the claimed method.

Accordingly, the Applicants respectfully submit that claim 11 is patentably distinct from *Sarskog and Van Reenen* and request the rejection be withdrawn.

Independent claims 18 and 19, although different in scope, recite at least some of the same distinguishing features noted above with respect to claim 11. Therefore, arguments similar to those in connection with claim 11 are also applicable to claims 18 and 19. Accordingly, the Applicants respectfully submit that independent claims 18 and 19 are patentably distinct from *Sarskog and Van Reenen* and request that the rejection be withdrawn.

(2) Dormehl in view of Jouenne

In numbered paragraph 5 on page 9 of the Office Action, the Examiner maintains the rejection of claims 11-20 as allegedly being unpatentable over *Dormehl and Jouenne*. The Applicants respectfully submit that the purported combination cannot support a rejection of the claims because the applied references, whether taken alone or in combination, fail to disclose each element recited in claim 11.

Dormehl discloses a mobile telephone data maintenance system that includes a centralized computerized server configured to organize data received from mobile phones per the request of a mobile telephone user (see p. 3, ll. 18-20). The server includes a database/sub databases for the storage and organization of information. The reference in its entirety refers to the database management system (i.e., organization of data within the server) and does not in any way pertain to the manner in which information is transmitted

from the phone to the server. Specifically, the reference is entirely silent with respect to first dividing data in the mobile phone into a plurality of subsets, sending a first subset from the plurality of subsets from the divided data, waiting a predetermined amount of time, and sending another subset from the plurality of subsets.

In *Dormehl*, the computerized server receives all data from a mobile telephone, and each time it receives all the data from the mobile telephone, it compares it with data that is already backed up and organized for that telephone. It then determines to either replace all of the existing data or to simply update the data according to user's instruction. At no point, however, does *Dormehl* disclose dividing data into subsets and individually transmitting each subset from the divided data (i.e., one subset at a time) to the server for back up. Regardless if *Dormehl* discloses that backed up data (in the server database record) can be released to a given mobile telephone under predetermined conditions (see, e.g., p. 3, ll. 13-15), this in no way can be interpreted as first dividing a batch of data into a plurality of subsets and transmitting each individual divided subset of data from a communication device to a server for backup after predetermined times, as recited in claim 1.

Moreover, at page 5, the Office Action asserts that the predetermined conditions mentioned in *Dormehl* correspond to a predetermined amount of time. However, the reference does not support this assertion. Rather, the predetermined conditions referenced on page 3 of *Dormehl* pertain to the situations in which, after the data has been downloaded and stored in the database, that data will be released back to a user. These conditions are described on page 8 of *Dormehl*. One is where there is an explicit request by the user to correlate the data in the database with the memory of the mobile phone. Another is where the memory of the phone is to be updated, or data is to be transferred to a new phone. No where does *Dormehl* state that these conditions include the passage of a predetermined amount of time. Nor does the reference state that the lapse of a predetermined amount of time is

associated with the process of sending the data from the phone to the data base server for backup. The reference (specifically the portions relied upon by the Examiner) is entirely silent with respect to the above-noted claim features of claim 1.

MPEP § 2112(IV) states that in order for the Examiner to make an assertion (i.e., "wherein said method includes, in which, once the mobile communication device has divided a batch of data to be backed up into a plurality of subsets, prepared a first subset of data from the plurality of subsets and transmitted the first subset of data to a network server for backup" and "the backup is delayed by a predetermined period of time...and the backup of at least one other subset of data from the plurality of subsets subsequent to the first subset of data is resumed at the end of said predetermined period of time," see, e.g., p. 5 of the Office Action), the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill in the art."

The Applicants respectfully put forward that the Examiner has not made the required showing that (1) a batch of data to be backed up is first divided into a plurality of subsets and that (2) each subset from the divided batch of data is transmitted for backup after a predetermined period of time are necessarily present in *Dormehl* (or in *Sarskog* and *Van Reenen*). Further, the Examiner has not made clear that the above-noted claimed feature would be so recognized by persons of ordinary skill in the cited art.

In addition to the above-noted deficiencies, *Dormehl* further fails to disclose or suggest asynchronous backup, to which the Examiner concedes. To this end, the Examiner turns to *Jouenne* for allegedly teaching this feature. However, like *Dormehl*, *Jouenne* does not disclose first dividing information to be backed up into a plurality of subsets, sending a first subset from the plurality of subsets, waiting a predetermined amount of time, and sending another subset from the plurality of subsets, as recited in claim 11.

For at least the foregoing reasons, the Applicants respectfully submit that neither *Dormehl* nor *Jouenne*, taken individually or in combination, disclose or suggest the claimed features and, therefore, cannot support a *prima facie* case for rejecting claim 11 under 35 U.S.C. §103(a). Thus, the Applicants respectfully request the rejection be withdrawn.

Independent claims 18 and 19, although different in scope, recite at least some of the same distinguishing features noted above with respect to claim 11. Therefore, arguments similar to those in connection with claim 11 are also applicable to claims 18 and 19. Accordingly, the Applicants respectfully submit that independent claims 18 and 19 are patentably distinct from the cited references and request that the rejection be withdrawn.

Moreover, based at least upon their dependence from an allowable independent base claims 12-17 and 20 are also patentably distinct from the cited references.

CONCLUSION

All of the stated grounds of rejection have been properly traversed. The Applicants therefore respectfully request that the Examiner reconsider and withdraw the presently outstanding rejection. The Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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